UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,981	03/11/2004	Dennis Eugene Kuhlman	9576	4999

27752 7590 01/06/2011

THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI, OH 45202

EXAMINER	
SMITH, RYAN C	

ART UNIT	PAPER NUMBER
1612	

MAIL DATE	DELIVERY MODE
01/06/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/797,981	KUHLMAN ET AL.	
	Examiner	Art Unit	
	RYAN SMITH	1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,9,15,16,18,19 and 21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6,9,15,16,18,19 and 21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *See Continuation Sheet*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :9/28/2007 and 8/18/2005 and 6/14/1004.

DETAILED ACTION

Status of Claims

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. An Official Action was mailed on August 11, 2009. Applicants responded on February 11, 2010. Amendments to the Claims were received on February 11, 2009. Claims 1-6, 9, 15-16, 18-19 and 21 are pending and are being considered on their merits in the instant Official Action.

Claims 1, 3-6, 9, 15 and 19 are currently amended.

Claims 2, 16 and 18 are original.

Claims 7-8, 10-14, 17 and 20 are cancelled.

Claim 21 is new.

Withdrawn Rejections

1. **Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.** The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In light of the amendments to the claims and the argument in response to the Office Action mailed on 08/11/2009, the rejection is withdrawn.

2. **Claims 3, 4, 6, 9, 17, and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention**. In light of the amendments to the claims and the argument in response to the Office Action mailed on 08/11/2009, the rejection is withdrawn.

3. **Claims 1, 2, 3, 5, 9, and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,674,509 (1997, Date et al) in view of US 5,869,441 (1999, Fair et al) and U.S. Patent 6,635,702 (2003, Schmucker-Castner et al).** In light of the amendments to the claims and the argument in response to the Office Action mailed on 08/11/2009, the rejection is withdrawn.

4. **Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Date in view of Fair and Schmucker-Castner as applied to claims 1, 2, 3, 5, 9, and 15-19 above, and further in view of U.S. Patent 6,589,517 (McKelvey et al).** In light of the amendments to the claims and the argument in response to the Office Action mailed on 08/11/2009, the rejection is withdrawn.

New Grounds for Rejections

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 1-6, 9, 15-16, 18-19 and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Lack of Literal Support for the Subject Matter as Claimed

The specification, as originally filed does not contain literal support for the subject matter as claimed in the instant application. Instant claim 1 describes a lathering surfactant comprising a mixture of anionic lathering surfactant, amphoteric lathering surfactant, and zwitterionic lathering surfactants. The claim is interpreted to require an anionic, amphoteric AND zwitterionic surfactant in the mixture. However, there is no literal support for a mixture of surfactants containing all three elements. The language is not supported in the claim because the ratio cited at the end of instant claim 1 describes the use of two values. Moreover, the instant disclosure does not provide support for the mixture as claimed. The instant disclosure (page 8, lines 18-20) describes the ratio, by weight, of the composition of anionic surfactant TO amphoteric and/or zwitterionic surfactant.

Lack of Inherent or Implicit Support

The MPEP states that the "[w]hile there is no *in haec verba* requirement, newly added claim limitations must be supported in the specification through express, implicit, or inherent disclosure." See MPEP 2163. The instant disclosure provides several examples of lack of inherent support for the new matter found in instant claim 1. First, the instant disclosure describes the use of lathering surfactants (page 8, line 7). The surfactants are selected from a group *consisting* of anionic surfactants, nonionic surfactants, amphoteric surfactants and mixtures thereof (page 8, lines 7-9). While this language allows for mixtures of surfactants, the list is silent as to the use of zwitterionic

surfactants. Thus, this does not provide support for mixing anionic, amphoteric and zwitterionic surfactants.

Furthermore, the instant disclosure states, on page 8, that "[t]o avoid skin irritation issues, the compositions should have a ratio by weight of the composition of anionic surfactant to amphoteric and/or zwitterionic surfactant is from about 1.1:1 to about 1:1.5, alternatively from about 1.25:1 to about 1:2, and alternatively from about 1.5:1 to about 1:3." Note that the if all three elements were utilized, a ratio of a:b:c would be listed. However the ratio recited only contains a:b or b:a. Thus, based on this disclosure, one of ordinary skill in the art would interpret the addition of an anion surfactant to a amphoteric surfactant OR zwitterionic surfactant. This does not lead one to conclude a mixture of anionic surfactant AND amphoteric AND zwitterionic surfactants.

Moreover, the instant disclosure teaches that that use of zwitterionic and amphoteric, as understood by the applicant at the time of the invention, were one in the same. This is shown in the instant disclosure, when the applicant describes "suitable amphoteric OR zwitterionic detersive surfactants for use in the composition" (page 10, lines 20-21). .

Additionally, the instant disclosure does not provide a single example showing that the lathering composition contains a mixture of an anionic surfactant, an amphoteric surfactant and a zwitterionic surfactant. The instant application states that preferred zwitterionic detersive surfactants are the betaines and sulfobetaines, e.g., cocoamidopropylbetaine and cocoamidopropylhydroxysultaine and preferred

amphoteric detersive surfactants for use in the present invention are selected from the group consisting of cocoamphoacetate, cocoamphodiacetate, lauroamphoacetate, lauroamphodiacetate. In the example provided the composition contains only a betaine (zwitterionic) or auroamphoacetate (amphoteric). These components are never recited as a single composition. Again, based on this disclosure, one of ordinary skill in the art would interpret the addition of an anion surfactant to a amphoteric surfactant OR zwitterionic surfactant. This does not lead one to conclude a mixture of anionic surfactant AND amphoteric AND zwitterionic surfactants.

For at least these reasons the amended claim contains new matter.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-6, 9, 15-16, 18-19 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Instant claim 1 describes a personal cleansing composition. Element (d) requires a lathering surfactant comprising a mixture of anionic lathering surfactant, amphoteric lathering surfactant and zwitterionic lathering surfactant. Note that the mixture is interpreted to require all three surfactants. However, the ratio at the end of instant claim 1(d) only includes two values, where the mixture as claimed would require three values

in the ratio. Thus, the claim is unclear if all three elements are present in the composition or only two elements. Clarification of the claim language is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. **Claims 1-2, 5-6, 9, 15 and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Patel et al (US 5,747,436) as evidenced by, *Applied Surfactant: principles and applications , chapter 1.4 by Tharwat F. Tadros*.**

The claims are drawn to a cleansing composition comprising an alkyl ethoxylated polymer, a cross-linked acid copolymer, a particulate material and a surfactant.

Note that claims 1-6, 9, 15-16, 18-19 and 21 are rejected under 112 second paragraph for being indefinite. However, for the purpose of compact prosecution instant claim 1 is being interpret to require a mixture of lathering surfactants, the mixture comprising an anionic lathering surfactant and either a zwitterionic OR an amphoteric lathering surfactant.

Patel et al (hereinafter Patel) teaches an effective conditioning shampoo composition which is free of conditioning amounts of silicone conditioning agents (abstract). Patel specifically teaches an PEG 55-propylene glycol oleate (Example 1, col. 11, lines 30-35). The PEG 55-propylene glycol oleate is found in a concentration of

1.5% by weight of total composition (Example 1, col. 11). Note that PEG 55-propylene glycol oleate is an alkyl ethoxylated polymer. Patel teaches the use of alkyl ethoxy ether sulfates contain 8-18 carbons per chain (claim 1). Patel also teaches the use of an acid co-polymer, in particular, Polyquanternium 7 and Polyquanternium 10 (Example 1). The Polyquanternium concentration is 0.59% by weight of the composition. Patel describes Polyquanternium as suitable non-cellulosic cationic polymers disclosed in the CTFA Cosmetic Ingredient Dictionary under the designation "Polyquaternium" followed by a whole number. Preferably, the mixture of the described water-insoluble equimolar complex of carboxylic acid and amine and the water soluble quaternized cellulose will be employed where high conditioning is desired. The proportion of conditioning agent in the final shampoo composition generally will be from about 0.05% to 6%, preferably 0.1% to 3.3% and most preferably 0.3% to 1.5% by weight of the final shampoo composition (col. 8, lines 1-16). Note that the Polyquanternium is described as a cationic polymer, and is acidic. Patel also teaches a PEG(4) di-stearylethonium ethosulfate (Example 1). This is a cleansing and/or exfoliating agent. The instant specification describes the use of polyethylene as particulate material. The particulate material taught in Patel is found at 0.40% by weight of the total composition.

Note that the use of the term zwitterionic and amphoteric are used interchangeably, this is evidenced in *Applied Surfactant principles and applications , chapter 1.4 by Tharwat F. Tadros*. Patel also teaches the use of Cocoamidopropyl dimethyl betaine (Example 1, col. 11). Cocoamidopropyl dimethyl betaine is taught as 5.1% by weight of the composition. Note that Cocoamidopropyl dimethyl betaine is a

zwitterionic surfactant. Patel also teaches a sodium cumene sulfate (Example 1). The sodium cumene sulfate is taught as 1.3% by weight of the total composition. Note that sodium cumene sulfate is an anionic surfactant. Instant claim 1 describes the ratio of anionic to zwitterionic surfactants as from about 1.5:1 to about 1:3. This ratio is about 25% to 60% anionic surfactant and 40% to 75% zwitterionic surfactant. Patel teaches the ratio of the aforementioned surfactants, sodium cumene sulfate and Cocoamidopropyl dimethyl betaine, as 25.4% and 74.6% respectively.

The Average Lather Volume and the Brookfield Yield Value are both inherent features of the composition in instant claim 1, 15 and 19. Both the Brookfield Yield Value and Average Lather Value are the experimental results of the composition and are not in fact elements of the cleansing composition as claimed. Accordingly claim 1-2, 5, 15 and 19 are anticipated.

Patel teaches Polyquanternium 7 is a non-cellulosic co-polymer of dimethyldiallyl ammonium chloride and acrylamide (Example 1, col. 11, lines 43-44). Claim 9 is anticipated. Patel also teaches the use of PEG 55-propylene glycol oleate, which has 55 moles of ethylene oxide. Instant claim 6 describes the ethoxylated polymer comprising greater than 40 moles of ethylene oxide. Claim 6 is anticipated.

As previously mentioned, Patel teaches the use of sodium cumene sulfonate. Note that sodium cumene sulfonate is an anionic lathering surfactant that is a sulfonate. Instant claim 18 is anticipated.

Accordingly claims 1-2, 5-6, 9, 15 and 18-19 are anticipated.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. **Claims 3-4, 16 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patel et al (US 5,747,436) as applied to claims 1-2, 5-6, 9, 15 and 18-19 above, and further in view of Hinz et al (US 5,785,962).**

The claims are drawn to a cleansing composition comprising an alkyl ethoxylated polymer a cross-linked acid copolymer a particulate material and a surfactant.

Note that claims 1-6, 9, 15-16, 18-19 and 21 are rejected under 112 second paragraph for being indefinite. However, for the purpose of compact prosecution instant claim 1 is being interpret to require a mixture of lathering surfactants, the mixture comprising an anionic lathering surfactant and either a zwitterionic OR an amphoteric lathering surfactant.

Patel et al (hereinafter Patel) teaches an effective conditioning shampoo composition which is free of conditioning amounts of silicone conditioning agents (abstract). Patel specifically teaches an PEG 55-propylene glycol oleate (Example 1, col. 11, lines 30-35). The PEG 55-propylene glycol oleate is found in a concentration of 1.5% by weight of total composition (Example 1, col. 11). Note that PEG 55-propylene glycol oleate is an alkyl ethoxylated polymer. Patel teaches the use of alkyl ethoxy ether sulfates contain 8-18 carbons per chain (claim 1). Patel also teaches the use of

an acid co-polymer, in particular, Polyquanternium 7 and Polyquanternium 10 (Example 1). The Polyquanternium concentration is 0.59% by weight of the composition. Patel describes Polyquanternium as suitable non-cellulosic cationic polymers disclosed in the CTFA Cosmetic Ingredient Dictionary under the designation "Polyquaternium" followed by a whole number. Preferably, the mixture of the described water-insoluble equimolar complex of carboxylic acid and amine and the water soluble quaternized cellulose will be employed where high conditioning is desired. The proportion of conditioning agent in the final shampoo composition generally will be from about 0.05% to 6%, preferably 0.1% to 3.3% and most preferably 0.3% to 1.5% by weight of the final shampoo composition (col. 8, lines 1-16). Note that the Polyquanternium is described as a cationic polymer, and is acidic. Patel also teaches a PEG(4) di-stearylethonium ethosulfate (Example 1). The instant specification describes the use of polyethylene as particulate material. The particulate material taught in Patel is found at 0.40% by weight of the total composition.

Note that the use of the term zwitterionic and amphoteric are used interchangeably, this is evidenced in *Applied Surfactant principles and applications , chapter 1.4 by Tharwat F. Tadros*. Patel also teaches the use of Cocoamidopropyl dimethyl betaine (Example 1, col. 11). Cocoamidopropyl dimethyl betaine is taught as 5.1% by weight of the composition. Note that Cocoamidopropyl dimethyl betaine is a zwitterionic surfactant. Patel also teaches a sodium cumene sulfate (Example 1). The sodium cumene sulfate is taught as 1.3% by weight of the total composition. Note that sodium cumene sulfate is an anionic surfactant. Instant claim 1 describes the ratio of

anionic to zwitterionic surfactants as from about 1.5:1 to about 1:3. This ratio is about 25% to 60% anionic surfactant and 40% to 75% zwitterionic surfactant. Patel teaches the ratio of the aforementioned surfactants, sodium cumene sulfate and Cocoamidopropyl dimethyl betaine, as 25.4% and 74.6% respectively.

The Average Lather Volume and the Brookfield Yield Value are both inherent features of the composition in instant claim 1, 15 and 19. Both the Brookfield Yield Value and Average Lather Value are the experimental results of the composition and are not in fact elements of the cleansing composition as claimed.

Patel teaches Polyquanternium 7 is a non-cellulosic co-polymer of dimethyldiallyl ammonium chloride and acrylamide (Example 1, col. 11, lines 43-44). Patel also teaches the use of PEG 55-propylene glycol oleate, which has 55 moles of ethylene oxide. Instant claim 6 describes the ethoxylated polymer comprising greater than 40 moles of ethylene oxide.

Patel does not specifically teach the use of an alkyl substitution comprising a di-alkyl or tri-alkyl. Patel also does not specifically teach concentrations of anionic lathering surfactant in the range of 6-25% by weight of the total composition.

Hinz et al (hereinafter Hinz) teaches a shampoo composition providing the hair with improved properties such as compatibility, volume and luster, containing at least one anionic, nonionic and (or) zwitterionic (amphoteric) surfactant and a mixture of a) at least 0.1% by wt. lactic acid; b) at least 0.05% by wt. citric acid; and c) at least 0.05% by wt. pyrrolidone carboxylic acid (abstract). Hinz teaches suitable additives for shampoos are hair conditioning actives. Cationic polymers are preferably in a proportion between

0.1% to 2%, particularly 0.25% to 1.25% by wt. of the total composition (col. 3, lines64-66). Hinz also teaches the use of fatty acid amide sulfates prepared by ethoxylation and subsequent sulfation of fatty acid alkanol amides and the alkali salts, thereof, as well as long chain mono and dialkyl phosphates (col. 1, lines 51-55). Hinz claims an anionic surfactant which comprises 5-50% by weigh of the total composition (claim 5). Hinz specifically recites Sodium lauryl ether sulfate; 6% by weight of total composition (Example 4, col. 5); 7.5% by weight of total composition (Example 5, col. 6); and 9% by weight of the total composition (Example 6, col. 6). Hinz also uses plant and animal oils (col. 3, line 59). Specifically, burr root oil and almond oil (Example 1), aloe oil and wheat protein hydrozate (Example 3).

It would have been obvious to one of ordinary skill in the art to combine the teachings of Patel and Hinz because both teach the use of lathering personal care products. There is a reasonable expectation of success because Hinz teaches the advantage of using mono and di-alkyl phosphates are they are mild and skin-compatible detergents (col. 1, lines 53-55). Hinz are describes cationic polymers as being useful in hair care products because "cationic polymers...are also suitable as conditioning additives in the composition of the invention (col. 4, lines 1-5). Moreover, Patel teaches that the use of shampoos can contain any of the usual adjuvants found in shampoo provided that they do not interfere with the mildness, performance or aesthetic characteristics desired in the final product (col. 9, lines 46-48). As stated above Hinz teaches plant and animal oils (col. 3, line 59), specifically, burr root oil and almond oil (Example 1), aloe oil and wheat protein hydrozate (Example 3) may be used in personal

care compositions. It would have been obvious for one of ordinary skill in the art to combine the teachings of Patel and Hinz to add particulate materials, so long as they did not interfere with the qualities sought from the final composition.

As previously mentioned, Hinz describes the use of anionic surfactant which comprises 5-50% by weight of the total composition (claim 5). Hinz specifically recites Sodium lauryl ether sulfate; 6% by weight of total composition (Example 4, col. 5); 7.5% by weight of total composition (Example 5, col. 6); and 9% by weight of the total composition (Example 6, col. 6). The teachings in Hinz encompass the entire range cited in instant claim 16. Additionally, the anionic lathering surfactant taught in Patel is 25.4% of the weight of the composition. Note that instant claim 16 claims "about 25%by weight of the composition (Example 1, col. 11).

Further, the ratio of anionic and amphoteric or zwitterionic surfactants cited in instant claim 21 would have been obvious to one of ordinary skill in the art. Patel specifically teaches the use of 25.4% amphoteric surfactant and 74.6% anionic surfactant. However, Patel also describes a final shampoo composition, wherein the mixture of anionic detergent and amphoteric surfactant will be in the range of about 4.5% to about 39% by weight, with the weight ratio of anionic detergent to amphoteric surfactant being in the range of about 10:1 to 0.8:1. In preferred shampoos, the mixture of anionic detergent and amphoteric surfactant will be in the range of about 7% to about 24% by weight, with a weight ratio of anionic detergent to amphoteric surfactant in the range of about 3:1 to 0.9:1 (col. 6, lines 19-27). This is evidence of the anionic

surfactant ratio taught in Patel as being between 9% and 53% when compared to the amphoteric surfactant.

The MPEP states "Generally differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. Where the general condition of a claim are disclosed in the prior art, it is not inventive to discover the optimal or workable ranges by routine experimentation." See MPEP 2144.05. Given the overlap and the specific examples provided in Hinz and Patel, the use of a variety of anionic surfactant concentrations is routine optimization of a cleansing composition. Thus, unless applicant shows teaching to the contrary, instant claims 16 and 21 do not rise beyond that of a general condition achieved through obvious experimental optimization.

Accordingly, claims 3, 4, 16 and 21 are rendered obvious.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN SMITH whose telephone number is (571)270-5250. The examiner can normally be reached on Mon. - Thurs. 8 am - 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anish Gupta/
Primary Examiner, Art Unit 1654

/R. S./
Examiner, Art Unit 1612